

## § 1.650

(3) The ALJ may quash or modify the subpoena if it:

- (i) Is unreasonable;
- (ii) Requires production of information during discovery that is not discoverable; or
- (iii) Requires disclosure of irrelevant, privileged, or otherwise protected information.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

### *Hearing, Briefing, and Decision*

#### **§ 1.650 When and where will the hearing be held?**

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 1.640, generally within 25 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

- (1) That there is good cause for the change; and
- (2) That the change will not unduly prejudice the parties and witnesses.

#### **§ 1.651 What are the parties' rights during the hearing?**

Each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

- (a) To present testimony and exhibits, consistent with the requirements in §§ 1.621(c), 1.622(c), 1.625(c), 1.642(b), and 1.652;
- (b) To make objections, motions, and arguments; and
- (c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

#### **§ 1.652 What are the requirements for presenting testimony?**

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony for each party's initial case must be prepared and sub-

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mitted in written form. The ALJ will determine whether rebuttal testimony, if allowed, must be submitted in written form.

(1) Prepared written testimony must:

- (i) Have line numbers inserted in the left-hand margin of each page;
- (ii) Be authenticated by an affidavit or declaration of the witness;
- (iii) Be filed within 10 days after the date set for completion of discovery; and
- (iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 1.647 directing a witness to testify by telephonic conference call.

#### **§ 1.653 How may a party use a deposition in the hearing?**

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 1.644 against any party who:

- (1) Was present or represented at the taking of the deposition; or
- (2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

- (i) Was noted at the taking of the deposition; and